CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010 [~~rather than the program established pursuant to 907 KAR 1:145~~].

Section 1. Definitions. (1) [~~"Allocation" means the dollar amount designated to meet a participant's identified needs.~~

~~(2)~~] "DBHDID" means the Department for Behavioral Health, Developmental and

Intellectual Disabilities.

(2)[~~(3)~~] "Department" means the Department for Medicaid Services or its designee.

(3)[~~(4)~~] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22)

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is a direct result of, or is influenced by, the person's cognitive deficits.

(4)[~~(5)~~] "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and

2. Meet the assessed needs of the participant.

(5)[~~(6)~~] "Immediate family member" is defined by KRS 205.8451(3).

(6)[~~(7)~~] "Intellectual disability" or "ID" means:

(a) A demonstration:

1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of [~~approximately~~] seventy (70) plus or minus five (5) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least

two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) An intellectual disability that had an onset before eighteen (18) years of age.

(7)[~~(8)~~] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent (biological, adoptive, or foster) of a minor child who provides care to the child;

(b) The guardian of a minor child who provides care to the child; or

(c) A spouse of a participant.

(8)[~~(9)~~] "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person-centered

service plan [~~of care~~].

(9)[~~(10)~~] "Participant-directed service" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs which allows recipients to receive non-medical services in [~~a service~~] which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet his or her needs [~~is based on the principles of self-determination and person-centered thinking~~].

(10)[~~(11) "POC" means Plan of Care.~~

(11)[~~(12)~~] "State plan" is defined by 42 C.F.R. 430.10.

(12)[~~(13)~~] "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.

(2) In order to be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and

(b) Prior authorized by the department.

(3)[~~(a) The reimbursement provisions established in this administrative regulation shall apply after a recipient transitions to the new SCL waiver program established in 907 KAR 12:010.~~

~~(b) Prior to that transition, the services provided pursuant to 907 KAR 1:145 shall be reimbursed pursuant to 907 KAR 1:155.~~

~~(c)~~] Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 3. SCL Reimbursement and Limits. (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant:

(a) The amount of the charge billed by the provider; and

(b) Not to exceed the fixed upper payment limit for the service.

(2) The unit amounts and fixed upper payment limits listed in the following table shall apply [~~be the upper payment limits for the corresponding services listed in the following table~~]:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	$320.00
Community Access-Individual	15 minutes	$8.00
Community Access-Group	15 minutes	$4.00
Community Guide	15 minutes	$8.00
Consultative, Clinical and Therapeutic	15 minutes	$22.50
[~~Day Training through December 31, 2013~~]	~~15 minutes~~	~~$2.50~~
Day Training [~~effective January 1,~~	15 minutes	$2.20

~~2014~~]		
Day Training (Licensed Adult Day Health Center)	15 minutes	$3.00
Occupational therapy by occupational therapist	15 minutes	$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	$16.63
Physical therapy by physical therapist	15 minutes	$22.17
Physical therapy by physical therapy assistant	15 minutes	$16.63
Person Centered Coach	15 minutes	$5.75
Personal Assistance	15 minutes	$5.54
Positive Behavior Support	1 positive behavior support plan	$665.00
Residential Level I (4 to 8 residents)	24 hours	$130.35
Residential Level I (3 or less residents)	24 hours	$172.46
Residential -Technology Assisted	24 hours	$79.00
Residential Level II -12 or more hours of supervision	24 hours	$141.69
Residential Level II-fewer than 12	24 hours	$79.00

~~2014~~]		
Day Training (Licensed Adult Day Health Center)	15 minutes	$3.00
[~~Occupational therapy by occupational therapist~~	~~15 minutes~~	~~$22.17~~
~~Occupational therapy by certified occupational therapy assistant~~	~~15 minutes~~	~~$16.63~~
~~Physical therapy by physical therapist~~	~~15 minutes~~	~~$22.17~~
~~Physical therapy by physical therapy assistant~~]	~~15 minutes~~	~~$16.63~~
Person Centered Coach	15 minutes	$5.75
Personal Assistance	15 minutes	$5.54
Positive Behavior Support	1 positive behavior support plan	$665.00
Residential Level I (4 to 8 residents)	24 hours	$130.35
Residential Level I (3 or less residents)	24 hours	$172.46
Residential -Technology Assisted	24 hours	$79.00
Residential Level II -12 or more hours of supervision	24 hours	$141.69
Residential Level II-fewer than 12	24 hours	$79.00

hours of supervision		
Respite	15 minutes	$2.77
~~[Speech therapy~~	~~15 minutes~~	~~$22.17~~]
Supported Employment	15 minutes	$10.25

(3) Any combination of [~~a~~] day training [~~service~~], [~~a~~] community access [~~service~~], personal assistance, or any hours of paid community employment or on-site supported employment[~~, and a participant's hours of employment~~] shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized person-centered service plan [~~POC~~] period.

(6) Community transition shall be based on prior authorized cost not to exceed $2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized person-centered service plan [~~POC~~] period.

(8) Day training and supported employment alone or in combination shall not exceed 160 units per week.

(9) Environmental accessibility shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an $8,000 lifetime maximum.

(10) Goods and services shall not exceed $1,800 per one (1) year authorized person-centered service plan [~~POC~~] period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed $1,000 per one (1) year authorized person-centered service plan [~~POC~~] period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) [~~Physical therapy and physical therapy by a physical therapy assistant shall in combination not exceed fifty-two (52) units per month.~~

~~(14) Occupational therapy and occupational therapy by an occupational therapy assistant shall in combination not exceed fifty-two (52) units per month.~~

~~(15)~~] Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized person-centered service plan [~~POC~~] period.

(14)[~~(16)~~] Shared living shall be based on a prior authorized amount not to exceed $600 per month.

(15)[~~(17) Speech therapy shall not exceed fifty-two (52) units per month.~~

~~(18)~~] A vehicle adaptation shall be limited to $6,000 per five (5) years per participant.

(16)[~~(19)~~] Transportation shall be reimbursed:

(a)1. If provided as a participant directed service:

a. Based on the mileage; and

b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR 2:006, Section 8(2)(d); or

2. If provided by a public transportation service provider, at the cost per trip as documented by the receipt for the specific trip; and

(b) A maximum of $265 per calendar month.

(17)[~~(20)~~] An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(18)[~~(21)~~] Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(19)[~~(22)~~] A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full person-centered service plan [~~POC~~] year;

(c) If the service meets the requirements for an exceptional support in accordance

with the Kentucky Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)(a) The following shall qualify as an exceptional support and be reimbursed at a rate higher than the upper payment limit established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) or fewer residents;

6. Residential Level I - four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Consultative clinical and therapeutic services;

2. Person centered coaching;

3. Personal assistance; or

4. Respite.

(4) A service that qualifies as an exceptional support shall:

(a)1. Be authorized to be reimbursed at a rate higher than the upper payment limit established for the service in Section 3 of this administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at a higher rate than the upper payment limit and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. [~~Allocation. A participant shall be designated an allocated amount of funding to cover SCL waiver expenses for the participant's POC period based on assessment of the participant's needs performed by DBHDID.~~

~~Section 6.~~] Participant Directed Services. (1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the upper payment limit established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 4(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participant directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 6.[~~7.~~] Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

Section 7.[~~8.~~] Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 8.[~~9.~~] Incorporation by Reference. (1) The "Kentucky Exceptional Supports Protocol", June 2015 [~~November 2012 edition~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 12:020

REVIEWED:

8-4-14
Date

Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/5/15
Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 12:020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing September 14, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 12:020
Agency Contact: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding Supports for Community Living (SCL) waiver program services. The SCL waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF IID) to reside in and receive services in a community setting rather than in an institutional setting.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding SCL waiver program services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding SCL waiver program services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding SCL waiver program services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment eliminates references to funding allocations associated with SCL participants; replaces the term "plan of care" with "person-centered service plan"; eliminates references to a transition from a prior version of the SCL program; clarifies the sixteen (16) hour per day limit on certain services; updates the incorporated material by removing references to "credentialed employees" as employees aren't credentialed; and removes occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to correct, update, or clarify provisions and to comply with a federal mandate. Removing occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program is necessary to comply with a federal mandate issued by the Centers for Medicare and Medicaid Services (CMS) to DMS. As 1915(c) home and community based waiver services cannot duplicate services available to Medicaid recipients via the "state plan", CMS explicitly instructed DMS to remove the services from the waiver.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment will conform to the content of the authorizing statutes by ensuring

the safe and effective transition of enhanced services to enable updating, correcting, and clarifying provisions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring the safe and effective transition of enhanced services to enable updating, correcting, and clarifying provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving SCL waiver program services (participants) as well as providers of these services. Currently, there are over 4,400 individuals receiving services, over 1,900 on the waiting list to receive services, and over 251 providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is mandated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities or individuals will benefit from provisions being updated or clarified.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the amendment applies equally to all regulated entities/individuals.